

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ASHTON W. THOMAS,

Plaintiff,

v.

WASHINGTON CORRECTION
CENTER, *et al.*,

Defendants.

CASE NO. 3:19-cv-05619-BHS-JRC

ORDER RENOTING SUMMARY
JUDGMENT MOTION

This matter is before the Court on plaintiff's summary judgment motion (Dkt. 22) and plaintiffs' response requesting a continuance under Federal Rule of Civil Procedure 56(d). Dkt. 23. For the reasons discussed below, the Court grants the request for a continuance and re-notes the summary judgment motion (Dkt. 22) to July 17, 2020.

DISCUSSION

Plaintiff filed a summary judgment motion on May 21, 2020. *See* Dkt. 22. The discovery deadline in this matter is August 12, 2020, and the dispositive motions deadline is September 11, 2020. Dkt. 20. Plaintiff's summary judgment motion was noted for June 12,

1 2020; however, defendants timely filed a request for a continuance of the summary judgment
2 noting date. *See* Dkt. 23. Plaintiff has not responded to their request, and the matter is now ripe
3 for the Court’s review.

4 Defendants request a continuance of the summary judgment motion under Rule 56(d) on
5 the basis that (1) plaintiff filed his summary judgment motion well before the discovery cutoff,
6 (2) defendants intend to file a cross-motion for summary judgment in response but were unable
7 to timely compile the necessary evidence, and (3) compiling the necessary evidence is delayed
8 by factors including reduced Department of Corrections staff hours during the COVID-19
9 outbreak. *See* Dkt. 23, at 2–3. Defendants explain that they require affidavits from various
10 Department of Corrections employees and officials to respond to plaintiff’s claims (which
11 pertain to alleged deliberate indifference). *See* Dkt. 24.

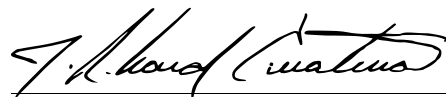
12 “If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot
13 present facts essential to justify its opposition, the court may . . . defer considering the motion or
14 deny it; . . . allow time to obtain affidavits or declarations or to take discovery; or . . . issue any
15 other appropriate order.” Fed. R. Civ. P. 56(d). A nonmovant generally must set forth the facts
16 it hopes to elicit from further discovery, that these facts exist, and that the sought-after facts are
17 essential to oppose summary judgment. *See Family Home & Finance Ctr., Inc. v. Fed. Home*
18 *Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008) (discussing former Rule 56(f)). Rule
19 56(d) relief should generously be granted where a summary judgment motion is filed early in the
20 litigation, “before a party has had any realistic opportunity to pursue discovery relating to its
21 theory of the case.” *Burlington N. Santa Fe R.R. Co. v. Assiniboine & Sioux Tribes of the Fort*
22 *Peck Reservation*, 323 F.3d 767, 773–74 (9th Cir. 2003). Unless the non-moving party has failed
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1 to diligently pursue discovery, such relief should be granted “almost as a matter of course.” *Id.*
2 (quoting *Wichita Falls Office Ass’n v. Banc One Corp.*, 978 F.2d 915, 919 n.4 (5th Cir. 1992)).

3 The Court notes that plaintiff has filed no opposition to the Rule 56(d) request for a
4 continuance—and a lack of opposition may be deemed as an admission that the motion has
5 merit. *See* Local Civil Rule 7(b)(2). Moreover, defendants promptly moved for a continuance
6 after plaintiff filed the summary judgment motion, and they have set forth the reasons they were
7 unable to timely obtain the evidence essential to their opposition to plaintiff’s motion and have
8 explained why they require the evidence to oppose the summary judgment motion.

9 Therefore, the undersigned finds good cause to re-note the summary judgment motion to
10 **July 17, 2020**. Deadlines for the opposition and reply briefs are those set forth by Local Civil
11 Rule 7. *See* LCR 7(d)(3) (“Any opposition papers shall be filed and served not later than the
12 Monday before the noting date. . . . Any reply papers shall be filed and served no later than the
13 noting date.”).

14 Dated this 6th day of July, 2020.

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18 J. Richard Creatura
19 United States Magistrate Judge
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